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5 IN THE UNITED STATES DISTRICT COURT  
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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8 UNIVERSAL TRADING & INVESTMENT  
9 CO,

No. C-99-03073 MMC (EDL)

10 Plaintiff,

**ORDER RE DEFENDANT'S  
MOTION TO LIFT ATTACHMENT**

11 v.

12 KIRITCHENKO ET AL,

13 Defendant.  
14 \_\_\_\_\_/

15 Defendant's Motion to Release Attachment on the property at 1901 Jackson Street No. 1,  
16 San  
17 Francisco, California (Assessor's Parcel Nos. 5-601-21) came on for hearing on April 3, 2007.  
18 Following the hearing, the Court ordered Defendant to file a copy of its appraisal of the property;  
19 disclose all terms and conditions of the sale, including any fees or commissions to be paid out of the  
20 sales proceeds; and, in the event Plaintiff sought its own appraisal, to cooperate in permitting  
21 Plaintiff's appraiser to inspect the property. The Court ordered Plaintiff to file objections to  
22 Defendant's appraisal, if any, and to file for the Court's review a copy of Plaintiff's appraisal, if  
23 completed. Plaintiff filed objections and an assessment of Defendant's appraisal on April 12, 2007,  
24 and requested further time to complete a full appraisal. Defendant filed a response to Plaintiff's  
25 submission on April 16, 2007. Upon full consideration of the submissions and Plaintiff's objections,  
26 the Court ORDERS the following:

27 Defendant's response alleviates to some degree the Court's concerns that funds are being  
28 diverted to family members in the form of commissions. However, the response leaves open the  
question whether Defendant's appraisal undervalues the property and whether the proposed sale falls  
short of fair market value. For example, the price per square foot of the property in question was

1 appraised at approximately one half or one third of the price per square foot of the purported  
2 comparables. The Court is not persuaded at this point that Defendant's appraisal is adequately  
3 supported. Accordingly, the attachment will not be lifted and the sale may not proceed at this time.

4 Defendant has requested the opportunity to submit a rebuttal to Plaintiff's critique of  
5 Defendant's appraisal. The Court grants this request and orders Defendant to submit its rebuttal for  
6 the Court's review by Thursday, April 19, 2007. The Court recommends that Defendant also submit  
7 the appraisal completed by the buyer of the property, as part of its rebuttal or separately, which the  
8 parties may seek to obtain either voluntarily or by subpoena, if necessary. The Court will be  
9 receptive to a request to file the buyer's appraisal under seal, limiting its disclosure to counsel for  
10 purposes of this motion only, or to a request by the buyer to limit disclosure to the Court for an in  
11 camera review.

12 If the Court is satisfied with Defendant's rebuttal, the Court will order the attachment lifted  
13 at that time. If, on the other hand, the Court still has reservations after reviewing Defendant's  
14 rebuttal, and Defendant wishes to pursue the sale, the Court will order a further appraisal of the  
15 property. In that event, the Court will order Plaintiff and Defendant to immediately meet and confer  
16 to identify a neutral, mutually acceptable appraiser to perform an appraisal of the property to  
17 determine current fair market value at Defendant's expense. If the parties cannot identify a mutually  
18 acceptable choice within three calendar days of initiating their meet and confer, the parties are  
19 ordered to separately submit three acceptable choices each, complete with credentials, from which  
20 the Court will select a neutral appraiser to prepare the appraisal. The parties shall submit their joint  
21 or separate list of proposed appraisers within four calendar days of either Defendant's early  
22 initiation of the process or the Court's order requiring a further appraisal. Defendant shall inform  
23 Plaintiff and the Court within two calendar days of this order if, in the interests of expediting  
24 resolution of this matter, Defendant chooses to begin this further appraisal process immediately,  
25 rather than waiting for the Court's decision.

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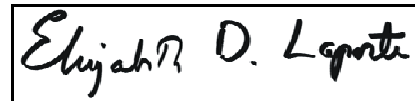
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1 If the Court requires a further appraisal, Defendant may reapply after completion of the  
2 appraisal to lift the attachment to sell the property for a price at or near the fair market value as  
3 determined by the neutral appraiser. Alternatively, Defendant may offer the property on the  
4 common open market for a competitive sale, but if Plaintiff raises apparently valid objections to any  
5 proposed sale, the sale may be subject to the same appraisal procedure.

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7 **IT IS SO ORDERED.**

8  
9 Dated: April 17, 2007



ELIZABETH D. LAPORTE  
United States Magistrate Judge